HON'BLE SRI JUSTICE D.RAMESH

CRIMINAL REVISION CASE No. 634 of 2007

ORDER:

This criminal revision case is filed under Sections 397 and 401 Cr.P.C., questioning the Judgment dated 04.04.2007 passed in CC No.286 of 2004 on the file of the court of Judicial Magistrate of Fist Class, Kota and also the show cause notice issued to P.Ws.1,3 and 4 in Crl.M.P.No.552 of 2007 in CC No.286 of 2004.

2. Heard learned counsel for petitioners and learned Public Prosecutor appearing for State.

3. The contention of learned counsel for petitioners is that shows cause notice issued under Section 250 Cr.P.C. vide Crl.M.P.No.552 of 2007 in CC No.286 of 2004 to P.Ws.1 3 and 4 is contrary to the provisions of Section 250 Cr.P.C. He submits that the complaint was made by P.W.1, but notices were issued to P.Ws.1,3 and 4 and that the complaint of P.W.1 was dismissed solely based on the evidence of P.W.4 and that therefore, show cause notice is contrary to law and is liable to be set aside.

4. Perused the material on record.

5. Learned Magistrate has dismissed the complaint filed by P.W.1 solely basing on the evidence of P.W.4. In this regard, relevant portion at para-19 of the impugned Judgment is extracted hereunder:

> *"19. .... It is not the evidence of P.W.4 that the sale deed was a null and void transaction and that the same was cancelled and that in spite of the said sale deed, he continued to be the owner of the land in dispute. By virtue of the sale deed of the year 1990, the ownership and title passed on to N.Sanjeevi Naidu in respect of the land in dispute and also the other remaining extent which originally belonged to the father of P.W.4. As early as from the year 1990 the family of P.W.4 had no manner of right whatsoever over the land in dispute. It*

is not the evidence of P.W.4 that in spite of the said sale deed, possession of the said land still remained with their family. The decision rendered by this Court in A.T.C.1/97, the decision in CMA.22/2003 rendered by the District Judge and the decision in OS No.49/2003 would clearly go to show that the family of P.W.4 had no manner of right, title, interest and possession over the land in dispute from the year 1990."

6. While acquitting the accused by dismissing the complaint of P.W.1, learned Magistrate has issued a show cause notice under Section 250 Cr.P.C. to P.Ws.1,3 and 4.

7. Section 250 Cr.P.C. reads as under:

250. Compensation for accusation without reasonable cause.

(1) If, in any case instituted upon complaint or upon information given to a police officer or to a Magistrate, one or more persons is or are accused before a Magistrate of any offence triable by a Magistrate, and the Magistrate by whom the case is heard discharges or acquits all or any of the accused, and is of opinion that there was no reasonable ground for making the accusation against them or any of them, the Magistrate may, by his order of discharge or acquittal, if the person upon whose complaint or information the accusation was made is present, call upon him forthwith to show cause why he should not pay compensation to such accused or to each or any of such accused when there are more than one; or, if such person is not present, direct the issue of a summons to him to appear and show cause as aforesaid.

(2) The Magistrate shall record and consider any cause which such complainant or informant may show, and if he is satisfied that there was no reasonable ground for making the accusation, may, for reasons to be recorded make an order that compensation to such amount, not exceeding the amount of fine he is empowered to impose, as he may determine, be paid by such complainant or informant to the accused or to each or any of them.

(3) The Magistrate may, by the order directing payment of the compensation under sub- section (2), further order that, in default of payment, the person ordered to pay such compensation shall undergo simple imprisonment for a period not exceeding thirty days.

(4) When any person is imprisoned under sub- section (3), the provisions of sections 68 and 69 of the Indian Penal Code (45 of 1860). shall, so far as may be, apply.

(5) No person who has been directed to pay compensation under this section shall, by reason of such order, be exempted from any civil or criminal liability in respect of the complaint made or information given by him: Provided that any amount paid to an accused person under this section shall be taken into account in awarding compensation to such person in any subsequent civil suit relating to the same matter.

(6) A complainant or informant who has been ordered under sub- section (2) by a Magistrate of the second class to pay compensation exceeding one hundred rupees, may appeal from the order, as if such complainant or informant had been convicted on a trial held by such Magistrate.

(7) When an order for payment of compensation to an accused person is made in a case which is subject to appeal under sub- section (6), the compensation shall not be paid to him before the period allowed for the presentation of the appeal has elapsed, or, if an appeal is presented, before the appeal has been decided; and where such order is made in a case which is not so subject to appeal the compensation shall not be paid before the expiration of one month from the date of the order.

(8) The provisions of this section apply to summons- cases as well as to warrant- cases.

8. Having regard to the facts and circumstances of the case and considering the submissions, this court is of the view that the show cause notice in Crl.M.P.No.552 of 2007 in CC No.286 of 2004 on the file of the Court of Judicial Magistrate of First Class, Kota is contrary to the provisions under Section 250 Cr.P.C. and the same is liable to be set aside. Accordingly, show cause notice in Crl.M.P.No.552 of 2007 in CC No.286 of 2004 on the file of the Court of Judicial Magistrate of First Class, Kota is hereby set aside.

9. With the above observations, the criminal revision case is disposed of.

Miscellaneous petitions pending if any, shall stand closed.

JUSTICE D.RAMESH

17.08.2020

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HON'BLE SRI JUSTICE D.RAMESH

CRIMINAL REVISION CASE No. 634 of 2007
(disposed of)

17.08.2020

Mjl/*